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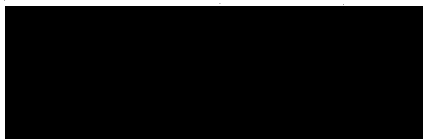
U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

10/21/04



FILE:



Office: NEBRASKA SERVICE CENTER

Date: **OCT 21 2004**

IN RE:

Applicant:



APPLICATION:


Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for 

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center. An appeal filed by the applicant was treated as a motion to reopen, and the director again denied the application. The applicant appealed the director's decision on the motion, and it is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1254.

The director determined that the applicant failed to establish she: 1) had continuously resided in the United States since December 30, 1998; and 2) was eligible for late registration. The director, therefore, denied the application.

On appeal, the applicant states that she has failed to register during previous extensions with no excuse, but she has never abandoned her TPS application.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an initial application for TPS during the initial registration period on March 22, 1999. That application was denied on May 18, 2000, based on the applicant's failure to respond to a request for evidence to establish her eligibility for TPS. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, June 1, 2002. The director denied this application because it was filed outside of the initial registration period and because the applicant had failed to establish her eligibility for filing under the provisions of late registration. In addition, the director found that the applicant also failed to establish her entry into the United States and her continuous residence since December 30, 1998. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because she was ineligible for later registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on March 22, 1999. That initial application was denied by the director on May 18, 2000. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on June 1, 2002. Since the initial application was denied on May 18, 2000, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state as designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

Continuously physically present, as defined in 8 C.F.R. §244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain

continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Continuously resided, as defined in 8 C.F.R. §244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present since January 5, 1999. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2005, upon the applicant's re-registration during the requisite period.

The initial registration period for Hondurans was from January 5, 1999 to August 20, 1999. The record shows that the applicant filed her application on July 1, 2002.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed her application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. See 8 C.F.R. § 244.2(g).

On September 26, 2002, the applicant was provided the opportunity to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing her nationality, her date of entry and continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States from January 5, 1999 to the date of filing the application. The applicant, in response, provided evidence of her nationality, and evidence in an attempt to establish her residence and physical presence in the United States. The applicant did not present any evidence of her eligibility for late registration. Therefore, the director denied the application on January 13, 2003.

An untimely appeal filed on September 12, 2003, was treated by the director as a Motion to Reopen. On motion, the applicant stated that she entered the United States in November 1998 and is providing the only proof she has to establish this claim. The director noted that although the applicant provided additional evidence in an attempt to establish her continuous residence and physical presence in the United States during the qualifying period, she failed to provide evidence that she had qualified for late registration. The director determined that the grounds for denial have not been overcome and affirmed his previous decision.

On appeal, the applicant resubmits evidence previously provided in an attempt to establish continuous residence

and continuous physical presence in the United States. However, this does not mitigate the applicant's failure to file her TPS application within the initial registration period. The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant failed to establish her eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established her continuous residence in the United States since December 30, 1998.

As stated above, the applicant was requested on September 26, 2002 to submit evidence establishing her nationality, her qualifying residence and physical presence in the United States. In response, the applicant submitted the following documentation:

1. A copy of her birth certificate with English translation.
2. A copy of a letter from [REDACTED]
3. A copy of a letter from [REDACTED]

In his letter, Mr. [REDACTED] states that the applicant has lived in the United States since November 1998 and previously was his tenant. However, Mr. [REDACTED] failed to provide any evidence in support of this claim, i.e. rent receipts. Moreover, Mr. [REDACTED] does not indicate when the applicant ceased renting from him. In addition, Mr. [REDACTED] has not demonstrated that his knowledge of the applicant's continuous residence in the United States is independent of his personal relationship with the applicant. If this knowledge is based primarily on what the applicant told him about her entry into the United States, then his statement is essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony.

Mr. [REDACTED] claims that the applicant has lived in the United States since November 20, 1998. According to Mr. [REDACTED] the applicant would eat at his restaurant. Similarly, Mr. [REDACTED] has not demonstrated that his knowledge of the applicant's entry into and continuous residence in the United States is independent of his personal relationship with the applicant. Therefore, neither statement is of any probative value.

The director concluded that the applicant had failed to establish her qualifying residence and physical presence in the United States during the requisite periods and denied the application on January 13, 2003.

On motion, the applicant furnished various documents, including a statement from [REDACTED]. In her statement, Ms. [REDACTED] claims that the applicant entered the United States since November 1998 and that she and the applicant were neighbors. However, Ms. [REDACTED] has not demonstrated that her knowledge of the applicant's entry into the United States is independent of her personal relationship with the applicant. If this knowledge is based primarily on what the applicant told her about her entry into the United States, then her statement is essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony.

The director noted that the remaining evidence provided by the applicant established continuous physical presence in the United States from January 21, 1999 to the filing of her application. However, the applicant had not provided sufficient evidence to establish that she had entered the United States and maintained continuous residence on or before December 30, 1998. On October 23, 2003, the director determined that the grounds for

denial, on motion, have not been overcome and affirmed his previous decision.

On appeal, the applicant resubmits evidence previously provided. The applicant has not submitted sufficient evidence to establish her date of entry and continuous residence in the United States since December 30, 1998. She has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for temporary protected status on this ground will also be affirmed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.